

**Webinar Call of the Secretarial Commission on Indian Trust Administration and Reform  
August 13, 2012  
Meeting Summary**

The Secretarial Commission on Indian Trust Administration and Reform held a public webinar on August 13, 2012. Commission Chair Fawn Sharp chaired the webinar. Sarah Palmer, U.S. Institute for Environmental Conflict Resolution (USIECR) facilitated the meeting and Bridget Radcliff, USIECR, took notes. Approximately 46 members of the public participated in the webinar. The webinar attendees are listed in Appendix A.

**Welcome, Introductions, Agenda Review**

Chair Sharp welcomed everyone and thanked the Commissioners for their participation. Commissioners Robert Anderson, Tex Hall, Stacy Leeds, and Peterson Zah were all on the call. The Chair noted that this is the first opportunity for the Commission to discuss the draft of the statement on trust responsibility and the draft conflict of interest protocols. Chair Sharp acknowledged the work of the subcommittees on bringing these drafts together and thanked subcommittee members Chuck Evans, Mark Davis, Erin Shirl, and Liz Mashie for joining. Chair Sharp reviewed the agenda and objectives for the meeting. The meeting objectives were:

- Attend to Commission operations
- Discuss findings from outreach efforts since June and key themes from input received to-date
- Review and discuss products from Commission subcommittees including draft recommendations
- Review and revise draft agenda for September 13-14 Commission meeting and associated outreach activities on September 12
- Hear public comments

**Trust Commission Operations**

Lizzie Marsters, DFO, provided a quick update regarding a call between the Commission and Deputy Secretary David Hayes on July 23. The Deputy Secretary discussed with the Commission ongoing initiatives, the interest in preventing another Cobell process, and implementing streamlining. The Deputy Secretary noted that Commission recommendations are important for administration and reform. DFO Marsters noted that the Department of Interior agrees that a management consultant is important to provide Commissioners with necessary information to assist the Commission in research on topics related to recommendations. The Department has great need for recommendations and will draft a letter to identify areas that will be greatly assisted by Commission recommendations.

Sarah Palmer, USIECR, provided updates on the action items from the June 2012 Commission meeting. The U.S. Institute has sent the draft meeting summary out for review and comments are requested by August 22, 2012. Preparations for the September meeting are well under way and draft documents will soon be sent to the Commission for review. Ms. Palmer welcomed questions regarding action items.

Chair Sharp noted that the public suggested language be added to the website and Commission PowerPoint regarding guidance for providing input to the Commission. The proposed language was read by Sarah Palmer and is as follows:

“The Commission recognizes that there are many important issues related to trust administration and management that impact tribes, individual Indians and tribal organizations.

The Commission welcomes your ideas, recommendations and possible solutions for trust management and administration to improve the delivery of trust services to Indian Country. To assist the Commission in its work, in addition to describing any problem or issue, we ask for your assistance by focusing your comments in the form of recommendations and solutions to improve Department’s implementation of the Federal trust responsibilities.”

Commissioners approved this language to be updated on the Commission website and outreach PowerPoint presentations. USIECR will ensure that the language is updated.

### **Commissioner Reports on Outreach during June and July**

Commissioners provided updates on outreach activities they have engaged in during the months of June and July 2012. Commissioners were also reminded of the protocol for outreach activities, specifically to coordinate with Regina Gilbert on behalf of Lizzie Marsters for any outreach requiring travel support. Commissioners may find the policy and associated forms on the Commission SharePoint site. It is important that the Commission operate in a transparent way, ensuring spending is done appropriately and that the feedback garnered from the public is captured in the Commission record.

Commissioner Zah spent a day in July 2012 at the Office of Special Trustee (OST) in Gallup, NM. He noted that this office has a large constituency of community people coming to the offices and asking questions. Commissioner Zah commented that this visit was helpful in understanding the history of the program, how the community interacts with OST, the questions OST receives about the Commission, and the range of questions and concerns they receive on a daily basis. Dr. Zah was impressed by the kind of questions OST receives from the public and the kinds of discussions OST has with people. He noted that the people that come to that office are the recipients of benefits that are offered by the DOI through the Cobell settlement. Dr. Zah was impressed by the bilingual people able to communicate with elderly people who may be timid and shy in asking some. He commented that the props, maps, and examples they use to educate the public are impressive.

On July 24, Dr. Zah visited the BLM Mineral Management Department office in Farmington, NM. He was invited as a Commissioner to discuss the work of the Commission and for his part, receive an education in terms of the role and function of the office. While there he looked at a large map where allottees live and it was noted that the land consolidation was a big issue for them. Dr. Zah spent the whole afternoon talking to the staff and learning about the kind of work they are doing with local county and city officials and tribal governments.

Dr. Zah was invited as a guest speaker at the 43<sup>rd</sup> anniversary of the DNA People’s Legal Services in Window Rock, AZ. He noted that there were lawyers, tribal court advocates, and staff involved in the program that came back to Window Rock for the celebration. Some of the cases that were consolidated with Cobell originated from the Navajo nation and those representatives were there and they wanted to talk about the Commission. Dr. Zah received many questions about the timing of payments from the settlement. Former Governor Doyle of Wisconsin was the other guest speaker and he addressed land issues being faced by Native nations in Wisconsin.

Dr. Zah will continue to visit schools and will be at Diné College August 22 to discuss land issues and issues they feel are important regarding local projects. Dr. Zah and Chair Sharp also participated in the UNITY Annual Conference in Phoenix, AZ.

Commissioner Leeds has engaged in several one-on-one private conversations with BIA and OST employees and is also reaching out to tribes and tribal organizations. Commissioner Leeds will attend the Annual Indian Land Consolidation Symposium hosted by the Indian Land Working Group October 14 and 15. She will provide an overview of Commission work and will entertain questions from the audience. Commissioner Leeds will also attend the BIA Providers Conference in Anchorage, AK November 25 and 26 to interact with tribes and villages in AK.

Chair Sharp attended NCAI June 16-20 in Lincoln, NE and participated in a break out session specifically on the Commission. She reviewed the outreach PowerPoint and fielded questions. Chair Sharp and Commissioner Zah attended the UNITY Conference June 10-12 in Phoenix, AZ. They engaged in conversation with the next generation and Commissioner Zah was invited to present to the larger group. This interaction provided insight to the youth perspective and Chair Sharp noted her interest in broadening engagement with the Intertribal organizations and social media to reach out to the youth. Chair Sharp attended a joint session of the Warm Springs and Yakama tribal councils and discussed the work of the Commission. She has two upcoming outreach trips in October and noted that the Commission has several things upcoming through the rest of the year.

Commissioner Anderson participated in Native American Calling on August 14 and provided a short statement regarding the work of the Commission. He will also be hosting an Annual Law Symposium September 6-7 and will have a panel about trust reform and administration.

Commissioner Hall noted that there will be a session with at the United Tribal College in Bismarck as part of the Commission meeting in Bismarck and there will also be an outreach trip to Fort Berthold and New Town on September 12.

Chair Sharp noted that the Commission looks forward to meeting with the youth. She thanked Commissioner Hall, Pat Gerard, and Helen Riggs for their work on organizing the sessions in Bismarck. Chair Sharp commented that the Commission has been working on an outreach policy and reporting form to develop consistency on reporting and recording the work the Commission is doing. She noted the importance of being able to fully analyze what the public is sharing and incorporating these ideas into ongoing efforts.

#### **Review and Discussion of Commission Subcommittee Progress and Products**

The Audit Subcommittee has not yet met and has an upcoming call on August 27.

The Trust Relationship Subcommittee drafted a statement regarding this topic and has circulated it for review and comment by the Commission. The subcommittee feels this is a baseline for fundamentals on the federal/tribal relationship and they will follow-up with recommendations on specific areas, including ethical principles/protocols.

The Trust Models Subcommittee pulled back some of the research to focus on the draft conflict of interest protocols. The group will now return to issues of international models. It was noted that the subcommittee should look at the Spanish Government/Catalonian model and the U.S./Northwest

Territories model. The Commissioners agreed the December meeting would be a good opportunity to hear from experts on international relationships.

### **Potential Draft Commission Recommendations**

Commissioner Anderson provided an overview of the draft statement on trust responsibility. He noted that the draft on conflicts of interest protocols works well with the trust responsibility statement. Commissioner Anderson commented that public feedback would be helpful on both draft statements. The Commissioner also noted that he is looking forward to the letter from DOI regarding the items the Commission can provide draft recommendations on – like the sunset of OST, the land consolidation program and how it will take shape when Cobell is final, and others highlighted by DOI.

Chair Sharp also noted the importance on establishing an approach for garnering public feedback on the drafts. She commented that there has been a departure from historical relationship between the U.S. and Tribal Nations over the decades. The Commission needs perspectives from Indian country on what the history of the relationship was, is, and should be.

Commissioner Zah noted that there will be a land consolidation program effective after the courts make the final decision on Cobell. He would like to see the research on what will be taking place specifically on that issue after the courts have completed appeals process. It is a controversial and emotional topic for people out in the community and they want to know more about the specifics to clear confusion about what is happening. Commissioner Zah asked, “Will there be the same problem of this moving forward as there have been with past processes that have stalled or not been completed?” He stressed the need to have clear information to share with the public and importance for people to understand what will happen with their land before they make a decision about what to do with it.

Commissioner Hall shared with the Commission that at outreach meetings with the Great Plains Tribal Chairman’s Association and the TBEC the topic of OST sun-setting came up. Both groups support the Commission making a decision sooner rather than later regarding the issue of sun-setting as the budgetary implications are great. Commissioner Hall noted that Congress will probably approve a continuing resolution for the next fiscal year and with a budget of \$139 million, that is a lot of funding that could be allocated to other areas. There are four regions that Commissioner Hall has talked with that encourage the Commission to make this recommendation in September rather than December because of the budget implications.

Chair Sharp commented that there is a lot of discussion to make some of the policy decisions ahead of the budgetary decisions because of the impacts of the potential budget talks and the Cobell settlement. She noted that the Commission will have to determine how the recommendations will impact these policy decisions.

Commissioner Leeds thanked Erin Shirl and Liz Mashie for their work on the conflict of interest protocols. She offered a suggestion to add in a mandatory disclosure area to Section C addressing conflicts that may not be direct conflicts but where there may be impropriety that could lead to a conflict of interest. Commissioner Leeds noted that this is important because many of these conflicts are outside of litigation and in early phases where litigation is being contemplated. She offered that this may be included in a second draft that can be shared with the public before the September Commission meeting.

Chair Sharp commented on the idea of an independent council to oversee the conflict of interest issues and how the Commission may offer recommendations to fund this council. She noted that the Commission needs to determine how the work product being created can be implemented – by Secretarial Order or Congressional Action? Chair Sharp mentioned that there is low-hanging fruit and may only require administrative authority to enact changes with front line personnel.

### **Public Comment**

There were not any public comments during this period. There were questions from the public throughout the webinar and these questions and responses may be found in Appendix B.

### **Overview of September 13-14 Meeting and related outreach activities on September 12**

Chair Sharp provided an overview of the third in-person Commission meeting to be held in Bismarck, ND September 13-14 and outreach activities scheduled for September 12. She noted that there will be several opportunities for the public to ask questions and provide comments to the Commission and that the agenda is designed in such a way that the Commission can engage the public after substantive discussion. The meeting will include to different subject matter panels – one on hard assets and the other on trust models, including international models. The Commission suggested that there also be a panel on probates. There was discussion regarding the representation on the panels and it was suggested that a group of perspectives may be good – tribal organizations, allottees, legal expert, and local government. Chair Sharp asked the Commission for input regarding speakers for the panel.

The Commissioners brainstormed several potential speakers.

- Tom Fredericks to talk about trust responsibility as a statement or strengthening trust responsibility. He is from ND and would bring a lot of credence to all the deliberations.
- NCAI, perhaps John Dossett, to summarize what NCAI has done over the years. Good to have dialogue with them.
- Cris Stainbrook from ILTF.
- Need to hear from allottee representatives as well.
- Reid Chambers would be a good speaker for the Seattle meeting.
- Henry Buffalo from the Great Lakes area.
- Mario Gonzales an attorney and allottee from Rapid City with experience on the Black Hills Settlement.
- JoAnna Merek from Nez Perce may have a tribal governance view.
- Marcella Giles as an allottee representative.
- Helen Sanders as an allottee representative.
- Leonard Gray and Terry Pitts from Confederated Salish-Kootenai are current board members on the Intertribal Agricultural Board Council and would be good for hard assets.
- Teresa Wall-McDonald would be a good panelist for probates.
- Chairman John Berry for trust reform.
- Professor Robert Miller, attorney for the trust model panel.

The Commission decided to invite the following individuals to speak on panels at the September meeting:

Hard assets: Helen Sanders, Tom Fredericks, and Jeannie Whiteing

Trust models: John Dossett (NCAI), Mario Gonzales, and Chairman Berry  
Probates: JoAnna Merek, Cris Stainbrook, Teresa Wall -McDonald

The Commission also discussed the preferred way to invite speakers to the Commission meeting. There was a suggestion to call individuals with an informal invitation and then follow-up with a formal letter invite from the DFO.

The Commission discussed the September 12 outreach session. The plan is for a daylong session from approximately 8:00 a.m. to 5:30 p.m. The morning session would be held at Fort Berthold and the afternoon at the Tribal Council offices in New Town. The itinerary for the sessions is being developed and will be shared with the Commission the week of August 20.

Commissioner Anderson shared with the Commission that Deputy Secretary David Hayes signed a letter yesterday stating that there will not be liens on lands in the land consolidation and that the land consolidation will not be run through ILCA. Commissioner Anderson will forward the letter to the USIECR facilitators and the letter will be shared with the Commission and posted on the Commission website.

Commissioner Zah noted that since there are community colleges in the area the topic of scholarship in the Cobell settlement should be discussed at the September meeting.

#### **Review Action Items**

Sarah Palmer, USIECR, reviewed the action items found in Appendix D.

Chair Sharp reviewed the dates for upcoming subcommittee calls. The Audit subcommittee will meet on August 27; Trust Models on August 27; and Research on August 30.

Commissioner Zah reminded the Commission that at the first meeting on March 2 in Washington D.C. the Secretary of the Interior indicated that there may be some issues that can be handled and recommendation made on or before the two year term of the Commission. He noted that there are some interim decisions to be made at the December meeting and that perhaps an extra could be added to the agenda for Commissioners to deliberate interim decisions and develop recommendations. Dr. Zah noted that one of the decisions is related to OST. He commented that if you are in a bilingual community those people [OST employees] are specially trained to respond to these questions. The Commission needs to make a decision on the role and existence of OST.

Commissioner Anderson agreed with Commissioner Zah's comments and noted that he is concerned about getting the independent consultant on board in a timely fashion to be able to provide advice to the Commission. Chair Sharp also concurred with Dr. Zah.

DFO Marsters shared with the Commission that the process of bringing the independent consultant on board may be longer than anticipated and that she will be able to provide an update in the coming weeks. She asked for the Commissioners to confirm their participation in the December Commission meeting. Commissioners Anderson, Zah, Leeds, and Sharp confirmed participation and Commissioner Hall said he believed he was available.

Commissioner Zah asked DFO Marsters to provide an update on the Cobell settlement, anticipated August 20, as soon as the Department was notified. DFO Marsters affirmed she would provide this update.

Chair Sharp adjourned the meeting at 1:04 pm Pacific.

**Appendix A. Trust Commission Webinar Attendees**

<b>Name</b>	<b>Affiliation</b>
<b>Commission Members</b>	
Robert Anderson	Commissioner
Tex Hall	Commissioner
Stacy Leeds	Commissioner
Fawn Sharp	Chair
Peterson Zah	Commissioner
Lizzie Marsters	Designated Federal Official
<b>Facilitation Team</b>	
Sarah Palmer	USIECR
Bridget Radcliff	USIECR
<b>ITC DOI Support Staff</b>	
Mark Davis	Counselor to the Action PDST, OST
Charles Evans	OST
Regina Gilbert	AS-IA/RACA
Helen Riggs	OST
Bodie Shaw	BIA
Michele Singer	Acting Principal Deputy Special Trustee, OST
Tiffany Taylor	Chief of Staff, Deputy Assistant Secretary Management, Indian Affairs
<b>Members of the Public</b>	
Acee Agoyo	Indians.com
Candace Odom	CMO Designs, LLC
Charlene Ramirez	IIM account holder
Charlotte Hicks	Upper Mohawk, Inc.
Cris Stainbrook	Indian Land Tenure Foundation
Daniel Rey-Bear	Nordhaus Law Firm
Daniel Watts	Nez Perce Tribe
David House	Berkey Williams LLP
Debby Pafel	OST
Debra DuMontier	OST
Derrick Beetso	NCAI
Devadatta Gandhi	George Waters Consulting Service
Dr. Rudolph Ryser	Center for World Indigenous Studies
Elizabeth Sparks	OST
Erin Shirl	Trust Model and Research Subcommittee Member
Francesca Hillery	Tulalip Tribes of Washington State
Gary Dorr	Gary F. Dorr Consulting and Individual Indian Land Owner
Gary Sloan	BIA
Ginger Morris	OST
Henry M Buffalo, JR	JBMAH
Jeremy Gravier	Round Valley tribal member
John Dossett	NCAI



Joshua Standing Horse	CRIHB
Kareen Lewis	Little River Band of Ottawa Indians
Katherine Martinez	DOI Office of Natural Resources Revenue
Lenzy Krehbiel-Burton	Native American Times
Leonard Weaskus	Individual Indian
Levi Ricket	Native News Network
Luke Williams	Hattie Pickens Foundation
Matt Volz	Associated Press
Melody McCoy	NARF
Pamela Pilarcik	Tribal organization representative
Patricia Marks	Ute Tribe of U & O
Rob Capriccioso	Indian Country Today
Robert McKenna	Retired Federal Employee
Robert Sally	Chinook Nation
Ross Swimmer	Swimmer Group, LLC
Sarah Crespin	Chickasaw Nation Industries
Scott Mannakee	Stillaguamish Tribe of Indians
Scott Sucher	Keres Consulting
Sue Anne Athens	CNI
Teresa Wall McDonald	Confederated Salish-Kootenai Tribes
Theresa Rosier	Salt River Pima-Maricopa Indian Community
Thomas Fredericks	Fredericks Peebles Morgan
Tom Schlosser	MSJS
Travis Lane	Intertribal Council of Arizona

**Appendix B. Questions and Comments from the Public via Online Webinar**

<b>Name</b>	<b>Question or Comment</b>	<b>Response</b>
Gary Dorr	Can we suggest Nez Perce tribal executive committee member and land enterprise committee chair for inclusion as a speaker?	This was shared with the Commission.
Daniel Rey-Bear	When and how with the draft trust responsibility and conflict of interest statements be made available for public comment?	The information will be posted on the Commission website by August 24 and the public may provide comment through the email on the Commission website.
Tom Schlosser	Can participants print or download the documents displayed on the screen?	The documents will be posted to the Commission website following the call. The commission website: <a href="http://www.doi.gov/cobell/commission/index.cfm">www.doi.gov/cobell/commission/index.cfm</a>
Teresa Wall McDonald	From Conf Salish & Kootenai Tribes - Anita Matt will be replaced by Leonard Gray and/or Terry Pitts - Tribal Chairmen on the Rocky MT Region IAC. Also Teresa Wall McDonald would be a good representative for the Probate Panel from a Compact Tribe on Probates. Leonard Gray and Terry Pitts are councilmen from CSKT and have been appointed to the IAC by the council.	This information was shared with the Commission.
Patricia Marks	Just a heads up- one of the issues under serious discussion right now is the IRS' efforts to tax tribal per capita payments made by the tribes from their tribal trust funds settlements- this goes to the bigger issue of the taxation of trust income when it is distributed to tribal members - the IRS is currently looking closely at taxation of tribal distribution of tribal general account income to tribal members for funerals, heating assistance and other forms of assistance- this is a big issue in the Great Plains and is likely to come up at the Bismarck session.	
Robert McKenna	As historical background, I just want to ensure that the Commission has seen the report prepared for the first	This was shared with the Commission.

	Special Trustee by consultants Macro International Inc. in 1997. Although the report is fifteen years old, many of the problems and solutions offered remain viable. A copy of the report should be available from OST.	
John Dossett	Tribes really pushed the HEARTH Act through Congress recently, where tribes can approve leases without the Secretary. Does this draft anticipate the new role of Interior when it is not "review and approval"? Should Interior be more focused on technical assistance?	
John Dossett	Suggestion for Speaker -- John Berrey, Chairman at Quapaw, has a huge amount of experience on trust reform and a fresh perspective	
Dr. Rudolph Ryser	The presentation on the Trust protocol was cursory and would require more thought for a recommendation, but one thought seems relevant here: The Commission ought to recommend a goal of the Trust Relationship....what will determine its success? And secondly any changes in the Trust Relationship ought to have incorporated the ability of Indian nations and tribes to opt in and opt out consistent with the principle of "free, prior and informed consent." I will be interested to submit a more detailed written discussion on these points if this will help.	

**Appendix C. Documents Reviewed During the Webinar**

- Guidance re Input to ITC 7-23-12
- Commissioner meeting and outreach calendar 8-6-12
- DRAFT ITC recommendations: United States Trust Responsibility Draft 8-6-12; ITC conflict of interest protocols Draft v1 8-6-12
- ITC Sept Agenda Sketch v2 8-6-12
- DOI ITC Outreach Policy and Guidance Version 4 4912 FINAL (Background document)

**Appendix D. Webinar Action Items**

<b>TASKS</b>	<b>LEADS</b>	<b>COMPLETE BY</b>
<b>COMMISSIONERS</b>		
Complete outreach reports for Commission record	All Commissioners	ASAP
Submit outreach session approval forms	All Commissioners	ASAP
Provide additional comments on the trust responsibility statement	Commissioner Anderson	August 31, 2012
Provide additional comments on the conflicts of interest protocols	Commissioner Leeds	August 31, 2012
Send the letter from Deputy Secretary David Hayes regarding no liens on land consolidations to USIECR for distribution to the Commission	Commissioner Anderson	August 24, 2012
<b>DOI TEAM</b>		
Send letters of invitation to the speakers for September	Lizzie Marsters	August 24, 2012
Confirm materials posted to ITC website	Regina Gilbert	August 24, 2012
Add language regarding input to the Commission to the website	Lizzie Marsters to review Regina Gilbert to post	ASAP
<b>US Institute Facilitation Team</b>		
Update Commission PowerPoint with language regarding input to the Commission, send to DOI for review and posting to website	Sarah Palmer	Completed
Draft next version of the September meeting agenda, send to Chair Sharp and DFO Marsters for review	Sarah Palmer	Completed
Develop agenda sketch that includes prompts for panel speakers and identified speakers	Sarah Palmer	August 24, 2012
<b>COMMISSION/DOI/FACILITATORS</b>		
Prepare read-aheads for the September meeting	Commission, DFO, Agency leads, USIECR	August 31, 2012